

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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**UNITED STATES OF AMERICA**

**v.**

**TONY DIAZ**

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) **CRIMINAL NO.**  
) **04-10274 – PBS**  
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**DEFENDANT’S MOTION TO SUPPRESS**

The defendant, identified in the case caption as “Tony Diaz,” moves to suppress evidence obtained as the result of a search of an automobile he was driving when he was stopped by Lawrence police on or about July 14, 2004. The evidence at issue is a firearm and ammunition as well as subsequent statements he is alleged to have made concerning the firearm. The defendant asserts that the search was in violation of his rights under the Fourth Amendment to the United States Constitution.

On July 14, 2004, the defendant was driving a blue BMW automobile. He was pulled over by police officers and, at gunpoint, instructed to get out of the car. He was then positioned face down on the ground, handcuffed, and thereafter placed in the backseat of one of the cruisers. According to written police reports, the defendant was handcuffed for the “officers’ safety,” but he was not arrested at that time. Despite the fact that the officers’ safety was thus secured, the officers conducted a “protective sweep” of the inside of the vehicle that the defendant had vacated. It was only after a firearm was discovered under the passenger’s seat that the defendant was arrested. The search of the automobile was, therefore, not incident to an arrest and, thus, *Thornton v. United States*, 541 U.S. 615

(2004) is not even arguably applicable.

Although the police reports suggest several grounds for reasonable suspicion for a *Terry* stop or for probable cause – at some stage – for an arrest, it is unclear from those reports what information may or may not have been available to the officers who stopped the defendant and searched his car. In any event, the defendant does not accept the accuracy of the reports.

By his attorney,

s/ Michael J. Liston

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